

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKETS

2003 MAR 14 A 11:59

Application of)
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CATHAY PACIFIC AIRWAYS)
LIMITED)

Docket OST-03-14493

for an Exemption from 49 U.S.C. 41301.)
(Hong Kong-United States))
)

MOTION OF
CATHAY PACIFIC AIRWAYS LIMITED
FOR LEAVE TO FILE AN UNAUTHORIZED DOCUMENT
AND SURREPLY TO REPLY OF FEDERAL EXPRESS CORPORATION

Communications with respect to this
document may be served upon:

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DATED: March 14, 2003

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MOTION FOR LEAVE TO FILE

On March 5, 2003, Federal Express Corporation ("Fed Ex") filed a document entitled "Reply of Federal Express Corporation in Support of Answer of United Air Lines, Inc." Since the arguments set forth therein attack the application filed by Cathay Pacific Airways Limited ("Cathay"), it would have been far more appropriate for Fed Ex to have included them in an answer to the application rather than in a reply to United's answer. Had Fed Ex followed accepted procedures and filed an answer, Cathay would have had an opportunity under the Department's procedural regulations to reply to those arguments. By this Motion, Cathay respectfully requests that it be permitted to file the following Surreply in response to Fed Ex's Reply.

SURREPLY

Like United, Fed Ex appears to be dissatisfied with the agreement negotiated by its government.¹ Thus, Fed Ex states that grant of the application "would unfairly grant to Cathay more flexibility to serve the U.S.-Hong Kong market than any U.S. carrier enjoys under the U.S.-Hong Kong air transport arrangements." Fed Ex Reply, p. 1. If Cathay has more flexibility under the agreement, it is because the agreement affords that flexibility and not because the Department may grant the rights requested in the current application.

Fed Ex also expresses concern that grant of the application somehow will disable the Department from insuring that Cathay and other Hong Kong airlines "adhere strictly to the terms of the bilateral." Fed Ex Reply, p.2-3. First of all, Cathay resents the implication that it might operate services in violation of the clear restrictions stated in the bilateral. Second, although the Department clearly has a responsibility to insure that operations by both Hong Kong and U.S. airlines comply with the agreement, that responsibility is shared equally by the Hong Kong government. Finally, as Cathay stated in its reply to United, it is willing to provide notice to the Department of the points it decides to serve and of the fifth freedom frequencies it is authorized to operate by Hong Kong.

Finally, Fed Ex asserts that Cathay's application is deficient primarily because the application does not contain information about Cathay's operational plans, including

¹ As noted in Cathay's Reply to United, United is the only U.S. airline that has applied for additional fifth freedom combination frequencies. On March 13, 2003, United requested a one year waiver of the dormancy condition applicable to those frequencies.

points to be served, equipment type, frequency of service, etc. Obviously, since Cathay is seeking authority to serve unnamed points, it could not include "points to be served."

Cathay would note, however, that the Department frequently grants exemption authority to serve unnamed points. For example, Korean Air Lines, Co., Ltd. and Singapore Airlines Limited received exemption authority similar to that requested herein by Cathay, i.e., authority to serve unnamed U.S. points and unnamed intermediate and beyond points.

In neither case, did the applicants provide marketing and/or operating information, which according to Fed Ex rendered the applications "deficient." Admittedly, such grants are made in the context of an open skies agreement, but the applications still are subject of the same procedural regulations and informational requirements.²

² Fed Ex also finds Cathay's application "deficient" because service was not made on relevant airport authorities. Fed Ex Reply, p.3, n.3. Since the application does not seek specific points, it could not have been served on the airport authority of the airports proposed for service. Moreover, in this connection it is noteworthy that according to its certificate of service, Fed Ex served its reply on a number of U.S. airlines, but it did not serve counsel for Cathay until after the undersigned contacted Fed Ex and requested a copy.

WHEREFORE, Cathay Pacific Airways Limited respectfully requests that the Department grant leave to file this Surreply, and further that the exemption authority sought herein be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William C. Evans", with a stylized flourish at the end.

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Counsel for Cathay Pacific
Airways Limited

DATED: March 14, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of March 2003, caused a copy of the foregoing document to be served upon counsel for Federal Express Corporation and United Air Lines, Inc. by U.S. mail.


Debra L. Klein